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4 May 1999

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FEDERAL COMMUNICATIONS COMMISSION
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Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

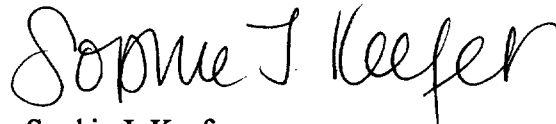
Re: Ex Parte Filing, CC Docket No. 96-115

Dear Ms. Salas:

Yesterday, representatives of the Association of Directory Publishers ("ADP"), met with Robert C. Atkinson, William J. Bailey, Jordan Goldstein, William A. Kehoe III, David A. Konuch, Frank Lamancusa, and Daniel R. Shiman of the Common Carrier Bureau concerning the above-referenced rulemaking proceeding. ADP was represented by Philip L. Verveer, Theodore Whitehouse, and Sophie J. Keefer.

At the meeting, ADP discussed the points raised in its previous *ex parte* filings in this proceeding. The attached letter responding to the 28 April 1999 *ex parte* filing of Ameritech represents a detailed discussion of some of the points raised by ADP at the meeting. In accordance with the Commission's rules, an original and one (1) copy of this letter and the letter responding to Ameritech's *ex parte* submission are being filed. Should you have any questions or require additional information, please do not hesitate to contact the undersigned at (202) 429-4730.

Respectfully submitted,



Sophie J. Keefer

cc:	Robert C. Atkinson	Linda Kinney
	William J. Bailey	David A. Konuch
	Kyle D. Dixon	Frank Lamancusa
	Paul Gallant	Thomas C. Power
	Jordan Goldstein	Daniel R. Shiman
	Kevin J. Martin	Paula Silberthau
	William A. Kehoe III	Lawrence E. Strickling

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4 May 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Submission, CC Docket No. 96-115

Dear Ms. Salas:

On behalf of the Association of Directory Publishers ("ADP"), this letter is submitted in response to Ameritech's *ex parte* submission of 28 April 1999. In response to a Commission request for information concerning its costs for SLI, Ameritech apparently submitted -- but did not include in the public record -- a cost study that is almost three years old concerning the cost of exchanging the names, addresses, and telephone numbers of extended area service ("EAS") subscribers with other LECs. As discussed below, the submission of these data by Ameritech is an attempt to delay implementation of rules ensuring reasonable and nondiscriminatory access to SLI by independent directory publishers and should be accorded little weight by the Commission.

Apparently, Ameritech has been in possession of the EAS cost study for almost three years. If these data were genuinely relevant to the implementation of Section 222(e), Ameritech would have submitted these data either at the commencement of the rulemaking, almost three years ago, or at some point during the continuous stream of *ex parte* submissions in this docket.¹ It is undisputed that cost has been at issue in this rulemaking since its inception.² That Ameritech has only submitted these data

¹ See Cable & Wireless PLC v. FCC, No. 97-1612 (D.C. Cir. 12 Jan. 1999).

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Ms. Magalie Roman Salas

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now -- on the eve of the adoption of an order -- is evidence that Ameritech's primary motive is to delay the implementation of Section 222(e).

Ameritech has submitted these cost data with a request for confidential treatment.³ It is unlikely that this study contains any information that would be considered proprietary under the Commission's standards. However, a proceeding in which the Commission is required to make such a determination would likely take several weeks, delaying the adoption of an order guaranteeing independent publishers access to SLI. Even if access to the data is permitted under a protective order, delay in implementation of Section 222(e) is inevitable. That Ameritech has requested confidential treatment strongly suggests that creating such a delay is Ameritech's primary purpose. The Commission should not tolerate such gamesmanship.

The Commission must expeditiously consider Ameritech's data, recognize that it is irrelevant to this dispute, and proceed with the adoption and release of an order. On their face, these data are irrelevant to the Commission's decision. These data were not used by Ameritech in establishing rates for SLI offered to directory publishers. Thus, the linkage between these data and Ameritech's actual costs to provide SLI is minimal.⁴

Ameritech claims that the cost study reveals that the long run incremental cost to provide EAS subscriber listings to other LECs is approximately eleven cents per listing. Ameritech claims that the SLI provided to directory publishers has a higher degree of accuracy and hints that the incremental cost of providing these data would be even higher. However, Ameritech currently charges directory publishers thirteen cents per listing for SLI.⁵ Unless Ameritech has decided to forego any profit in the sale of SLI to directory publishers, the EAS listings cost data is likely not representative of Ameritech's costs for SLI sold to directory publishers.

² See ADP White Paper (4 Apr. 1996)(cited at n.71 of the Notice of Proposed Rulemaking in CC Docket No. 96-115).

³ Ameritech did not initially include a copy of its request for confidential treatment with its filing. However, a copy of Ameritech's one page request for confidential treatment was filed on 30 April 1999.

⁴ Ameritech *Ex Parte* Submission of 28 April 1999, at 4 ("Ameritech does not possess a cost study that encompasses all of the appropriate costs of supplying SLI . . .").

⁵ Ameritech *Ex Parte* Submission of 17 March 1999, at 2.

The only cost studies that should be considered by the Commission in determining a benchmark price for SLI ought to contain data that was actually generated for the purpose of establishing rates for SLI. Such data have been presented by ADP in this proceeding. For example, in 1998, the New York Public Service Commission ("NY PSC") ordered Bell Atlantic to file tariffed rates for SLI based on the incremental cost to provide the listings.⁶ Bell Atlantic proposed a rate of \$0.0305 which was approved by the NY PSC.⁷ U.S. West has stated that SLI costs between \$0.015 and \$0.02.⁸ In a proceeding before the Florida Public Service Commission, BellSouth presented cost data showing that the cost to produce a listing is \$0.003.⁹ BellSouth's four cent per listing charge pursuant to tariffs filed in Florida and several other states is based on these data.

ADP has also submitted sufficient data to establish a benchmark price for updates. As Time Warner Telecom confirms in the attached letter to ADP, the cost of producing a listing update is only marginally higher than the cost to produce initial listings.¹⁰ This somewhat higher cost is reflected by U.S. West's submission, which states that the cost of such updated listings is not more than \$0.02 per listing, and BellSouth's cost study, which indicates a per listing incremental cost of \$0.004 for its

⁶ Local Competition II, Case Nos. 94-C-0099, 95-C-0657, 91-C-1174, 96-C-0039, *Order Regarding Directory Database Issues* (NY PSC 22 July 1998), appended as Exhibit J to ADP's 30 March 1999 *Ex Parte* Submission.

⁷ Local Competition II, Case Nos. 94-C-0095, 95-C-0657, 91-C-1174, 96-C-0036, *Order Resolving Petitions for Rehearing and Clarification of 22 July 1998 Order Regarding Directory Database Issues*, at 13 (NY PSC 7 Jan. 1999), appended as Exhibit E to ADP's 30 Mar. 1999 *Ex Parte* Submission.

⁸ U.S. West *Ex Parte* Submission of 17 March 1999.

⁹ Southern Bell Response to DADS and DPDS Data Request of the Florida Public Service Commission (8 Feb. 1993), appended as Exhibit B to ADP's 30 March 1999 *Ex Parte* Submission.

¹⁰ A letter from Mark D. Maynard, Senior Operations Manager - Directory at Time Warner Telecom to R. Lawrence Angove of ADP is appended hereto as Attachment A.

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WBAR service.¹¹ Thus, a per listing rate that is 50% higher than the per listing rate for base file listings, as suggested by ADP, is reasonable.

In the event that the Commission were to adopt rules, as ADP has consistently urged, providing for presumptively reasonable benchmarks and accelerated complaint proceedings to address rates above these benchmarks, carriers such as Ameritech could charge higher rates if such rates are justified by their costs. Under ADP's proposal, such carriers would be subject to enforcement proceedings brought by directory publishers and would bear the burden of proof. If the carrier could not present cost data actually generated to justify its higher rates, such rates would be presumed unreasonable.

Ameritech also provides information concerning the SLI products it currently offers. In so doing, Ameritech suggests that these products should replace Congress' definition of SLI. For example, Ameritech states that its "basic product" does not include primary advertising classifications for business subscribers because its "Listings Services System receives yellow pages classifications as part of new service order activity and passes the yellow pages classifications on to directory publishers as part of the Update and New Connect products."¹² Section 222(e) requires Ameritech to provide SLI to directory publishers upon request, regardless of whether the publisher purchases an update service or initial listings only. Because the definition of SLI includes the primary advertising classification assigned to a business subscriber at the time of the establishment of service, Ameritech's practice violates Section 222(e).¹³ Thus, the Commission would be ill-advised to adopt Ameritech's definition of a base product for existing SLI.

Similarly, Ameritech states that its "New Connect" service should not be included in the definition of a base product for updates to SLI because it is "used primarily as advertising sales leads" and "cannot be used for maintaining a listing database."¹⁴ However, new connect information is also used to deliver directories to new subscribers. Delivery of directories is essential to publishing a directory. Hence, Ameritech's definition would carve out this important component of publishing a directory from the reach of Section 222(e). The Commission should not adopt this suggestion.

¹¹ WBAR is a weekly listing of activity that occurs in a central office (NPA-NXX). See BellSouth *Ex Parte* Submission of 19 Nov. 1998.

¹² Ameritech *Ex Parte* Submission of 28 April 1999, at 3 n.2.

¹³ 47 U.S.C. § 222(f)(3).

¹⁴ Ameritech *Ex Parte* Submission of 28 April 1999 at 3.

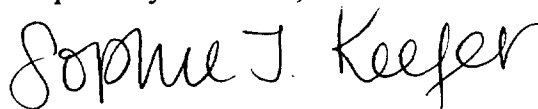
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Other examples of Ameritech's attempt to unreasonably limit the definition of SLI to a format that was not intended by Section 222(e), too numerous to list here, appear in Ameritech's filing. The rules adopted in this proceeding must not cater to a particular carrier's listing system or desire to preserve the status quo. Rather, the rules must guarantee directory publishers access to SLI in a format that is convenient, usable, and reasonably feasible, both for the carriers to provide and for the directory publisher to utilize. In this way, carriers and publishers will be encouraged to reach the most efficient agreement concerning the format of SLI to be provided.

Respectfully submitted,

A handwritten signature in black ink that reads "Sophie J. Keefer". The signature is written in a cursive, flowing style.

Philip L. Verveer
Theodore Whitehouse
Sophie J. Keefer

TIME WARNER TELECOM

March 4, 1999

R. Lawrence Angove
The Association of Directory Publishers
236 1/2 East Front Street
Suite 19
Traverse City, MI 49684

Re: Cost to Maintain SLI

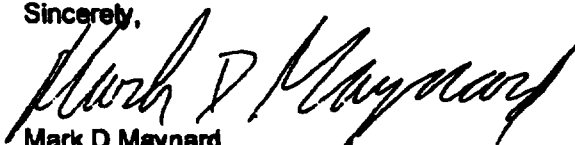
Dear Larry:

Time Warner Telecom ("Time Warner") is a competitive local exchange carrier ("CLEC") that provides competitive local services in at least sixteen markets covering ten states throughout the country. As such, Time Warner is responsible for ordering, maintaining, and processing subscriber list information ("SLI") for end users subscribing to Time Warner's switched services. As a condition of interconnection with incumbent local exchange carriers ("ILECs"), Time Warner typically is required to provide SLI to the ILECs free of charge and on a daily basis. In exchange, the ILEC provides Time Warner's subscribers with one main listing in the ILEC directory at no charge; Time Warner's subscribers are charged for additional listings.

As some LECs have failed to pass on Time Warner's SLI properly formatted for the directory publishing industry to third party publishers, Time Warner in some cases transmits these listings directly to independent directory publishers for inclusion in their directories. After analyzing the cost of this transmission, Time Warner has determined that the cost associated with processing these listings for the publisher is so nominal as to be impossible to quantify. Assuming that Time Warner had all of its directory listing information in an electronic file, there would be no appreciable difference in the cost of supplying a publisher with an entire listing file for one-time use or with daily updates.

However, with the competitive environment and multi-owner captions, Time Warner can only send incomplete information at best to independent directory publishers. Thus, Time Warner believes that the end user would be best served by independent publishers if these publishers were able to receive Time Warner's SLI directly from the ILECs' databases for completeness and timely updates. The ILEC has complete control over the basic information utilized in telephone directories and should be required to transmit Time Warner's listings in a format that is inter-filed and sequenced with other LECs' SLI in order to enable independent directory publishers to efficiently incorporate Time Warner's listings into their directories.

Sincerely,



Mark D Maynard
Senior Operations Manager - Directory
303-566-5936
mark.maynard@twtelecom.com